

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION**

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MDL No. 15-2666 (JNE/FLN)

This Document Relates To:

**Judy Mayne vs. 3M Company, *et al.*,
No. 0:15-cv-04265 (JNE/FLN)**

NOTICE OF RETRACTION OF LEXECON WAIVER

Comes now the plaintiff in the above-entitled cause and files herewith their Notice of Retraction of *Lexecon* Waiver and states as follows:

Due to the Court's ruling in the *Gareis* matter choosing the law of a plaintiff's state of residence rather than Minnesota law as the substantive law to be applied to plaintiffs' claims, amongst other rulings, which have collectively resulted in a material difference in the posture of the case, Plaintiff(s) in the above captioned litigation hereby rescind their waiver of their rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). Plaintiff(s)'s waiver was made without consideration. Although Plaintiff(s)'s case is in the general randomly selected bellwether pool, it has not been selected as a trial pick and no additional motion practice or discovery has occurred to move the case forward. Further, Defendants have never affirmatively

waived *Lexecon*, and the Court's choice of law ruling provides no benefit to Plaintiff(s) from the application of Minnesota law rather than the law of their state of residence.

Dated: June 6, 2018

Respectfully submitted,

KERSHAW, COOK & TALLEY, PC

/s/ Stuart C. Talley

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